

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Rules and Policies Concerning)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast)	
Stations in Local Markets)	
)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
_____)	

To: The Commission

COMMENTS OF CUMULUS MEDIA INC.

CUMULUS MEDIA INC.

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SUMMARY

The existing local radio ownership rules have allowed consolidation in the industry to occur in a manner that both responds to marketplace realities and furthers the Commission's public interest objectives regarding competition and diversity, consistent with the intent of Congress in the Telecommunications Act of 1996. Modifications to the numerical limits or to the methodology for defining radio "markets" are not warranted at this time. An illustration of the public interest benefits of consolidation to both listeners and advertisers can be seen in the two NPRM case-study markets in which Cumulus operates – Florence, South Carolina; and Rockford, Illinois.

Further, any rules and policies the Commission chooses to adopt in this area should recognize the particular challenges that radio owners face in smaller markets. Many smaller radio markets generate insufficient advertising revenues to support more than two viable, competitive groups, and permitting greater levels of consolidation in such markets will often generate more diverse and better quality programming for listeners, as well as improved products and services for advertisers.

Moreover, the Commission should not conduct case-by-case competition analyses, either pursuant to its existing (but unpromulgated) "50/70" advertising revenue-share screen or otherwise. Such case-by-case review is inconsistent with the intent of Section 202(b), needlessly burdens the Commission with a host of complex factual determinations, unnecessarily duplicates the functions of the antitrust enforcement agencies, and is not supported by any demonstrated public-interest justification.

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Cumulus Media Inc. ("Cumulus"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, respectfully submits these Comments in response to the Commission's *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* in this proceeding (the "NPRM"), 16 FCC Rcd 19861 (2001).¹

I. INTRODUCTION

The NPRM seeks to examine the effect that increased consolidation of radio station ownership has had on the public and to explore possible changes to the Commission's local radio ownership rules and policies in light of current marketplace conditions. As such, the NPRM requests comment on numerous issues relating to multiple ownership of radio stations in

¹ The deadline for filing comments in the proceeding was extended to March 27, 2002, by *Order*, DA 02-582, adopted and released on March 8, 2002.

local markets, including the statutory framework governing local radio ownership and the Commission's traditional goals of promoting diversity and competition.

Cumulus, through subsidiaries, owns or provides programming and marketing services to over 200 commercial AM and FM radio broadcasting stations. As a large, national radio broadcasting company, Cumulus has a high level of interest in the NPRM's examination of the local radio ownership rules and policies. Moreover, the NPRM expressly requests comments on two specific local markets in which Cumulus is the licensee of stations: Florence, South Carolina; and Rockford, Illinois.

In these comments, Cumulus submits that the existing local radio ownership rules have allowed consolidation in the industry to occur in a manner that both responds to marketplace realities and furthers the Commission's public interest objectives regarding competition and diversity, consistent with the intent of Congress in the Telecommunications Act of 1996 ("the 1996 Act"). Cumulus does not believe that modifications to the numerical limits or to the methodology for defining radio "markets" are warranted at this time.

Moreover, any rules and policies the Commission chooses to adopt in this area should recognize the particular challenges that radio owners face in smaller markets. Many smaller radio markets generate insufficient advertising revenues to support more than two viable, competitive groups, and permitting greater levels of consolidation in such markets will often generate more diverse and better quality programming for listeners, as well as improved products and services for advertisers.

Cumulus also does not believe that the Commission should conduct case-by-case competition analyses, either pursuant to its existing (but unpromulgated) "50/70" advertising revenue-share screen or otherwise. Such case-by-case review is inconsistent with the intent of

Section 202(b) of the 1996 Act, needlessly burdens the Commission with a host of complex factual determinations, unnecessarily duplicates the functions of the antitrust enforcement agencies, and is not supported by any demonstrated public-interest justification.

II. EXPERIENCE UNDER THE 1996 ACT AND THE EXISTING LOCAL RADIO OWNERSHIP RULES

A. Statutory Framework

As the Commission notes in the NPRM, “[o]ne interpretation of the statutory framework is that Congress conclusively determined that the numerical limits specified in Section 202(b) establish radio station concentration levels that are consistent with the public interest in diversity and competition. Under this interpretation, we would not consider any public interest factors relating to diversity or competition beyond compliance with the numerical limits.” *NPRM*, ¶25. Cumulus believes that this interpretation is the only one supported by the express text of the 1996 Act and its legislative history and, accordingly, should be the interpretation embraced by the Commission in this proceeding.

Section 202(b)(1) of the 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 (1996), delineates with precision the number of radio stations a single party may own, operate, or control in a local market of a given size. And the statute provides the Commission with no discretion to adopt a stricter station limit, or to adopt different measures of market concentration such as audience or advertising revenue shares. The statute thus embodies Congress’s judgment as to the proper balancing of the need for appropriate consolidation of ownership of media properties and the interests in avoiding undue concentration of control and maintaining a sufficient diversity of

voices, which the Commission is not free to override (subject only to the Commission's statutory obligation to conduct the required biennial review under §202(h)).²

Because Congress has clearly expressed its desire to regulate local radio ownership diversity through a set of tiered-market numerical station limits, as a matter of statutory construction, the Commission cannot now disregard that direction and promulgate a different (and more restrictive) set of ownership limits – either by rule or case-by-case adjudication. The same would be true for any different (and more restrictive) method for determining the relevant radio “market,” the size of such market, or the number of stations in the market that count toward the ownership limit.

In enacting the specific radio station ownership limits contained in Section 202(b), Congress attempted to balance the urgent economic and competitive realities that demanded multiple-station ownership with the avoidance of undue concentration of control. To achieve this balance, the new ownership limits were designed to help owners create viable “clusters” of multiple radio stations that were critical to achieving operating economies of scale, while at the same time making radio more competitive with other media by delivering more and better services to listeners and advertisers. These are the same pro-competitive benefits that the Commission itself found when it relaxed the local radio ownership rules prior to enactment of Section 202(b):

² Pursuant to this Congressional direction, the Commission implemented the Section 202(b)(1) radio ownership limits in its regulations, finding that they were “mandated” by the “specific terms set forth in the legislation.” *See Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368, 12370-71 (1996) (adopting revisions to 47 C.F.R. § 73.3555(a)(1)).

“...[C]ommon ownership of radio stations in a single local market permits those stations to function cooperatively with respect to advertising sales, programming, promotion, production and other operations. Group ownership also allows for the sharing of studio space, equipment and other resources. By lowering overall operating costs, such consolidation may permit a station to spend more money on programming quality and to lower advertising rates. In turn, consolidation may enable group-owned stations to become more vigorous competitors in the marketplace than they would be individually.”

Revision of Radio Rules and Policies, Second Memorandum Opinion and Order, 9 FCC Rcd 7183, 7186 (1994). The Commission further found that “multiple ownership may well encourage program content diversity because a firm owning several competing local stations has a strong incentive to program those stations with different formats in order to compete for different segments of the audience. Separate owners, on the other hand, might be more likely to direct their programming at the same listeners and follow similar formats.” *Id.* This is exactly what has occurred under the 1996 Act.

B. Effectiveness of Current Numerical Limits

As a general matter, Cumulus believes that the existing numerical limits have allowed consolidation in the radio industry to occur in a manner that effectively responds to marketplace realities, while at the same time addressing the Commission’s public interest concerns regarding competition and diversity (as well as localism). Consistent with the Congressional intent underlying Section 202(b), the current numerical station limits have enabled radio owners to develop clusters of stations that now provide a much better product for radio listeners and advertisers and make radio markets much more competitive. Combined operation of stations consistent with the current numerical limits creates significant efficiencies in the form of cost savings, which enable group owners to make substantial product improvements that are unlikely to be accomplished in the absence of the consolidation. Such improvements further

enhance the cluster's ability and incentive to compete with existing group(s) of stations, as well as other mass media such as television and newspapers.

Consolidation has greatly improved the service provided to listeners, especially in smaller markets. Prior to the 1996 Act, separately owned stations in many smaller markets often operated with lower quality, non-local programming (*e.g.*, with "canned" satellite programming). However, due to the efficiencies and cost savings realized by group ownership, Cumulus and other radio licensees have been able to upgrade the stations' product offerings. The improvements have typically included better focused stations through the use of extensive listener-driven market research, better equipment and facilities, and new or expanded locally-originated programming content. Investments in such higher quality products are justifiable only if the costs can be spread over a sufficient number of stations in the same local market, consistent with the statutory scheme adopted by Section 202(b).

Consolidation has also benefited advertisers by providing them with a single entity that can offer broad audience coverage and a broad array of time slots that meets the advertiser's needs, thereby saving the advertiser the costs of transacting with various different owners to get a similar level of broad coverage. More importantly, a local radio cluster can provide the advertiser with an array of different formats, similar to what the advertiser previously could obtain only through advertising in other media such as newspapers and television. This assures the advertiser that he is reaching a variety of listeners with different tastes even within the same broad demographic group.

C. Case-study Markets

An illustration of the public interest benefits of consolidation can be seen in the two NPRM case-study markets in which Cumulus operates – Florence, South Carolina; and

Rockford, Illinois. Post-1996 Act consolidation in both Florence and Rockford has strongly benefited service to both listeners and advertisers, and thereby promoted the public interest.

1. Florence, South Carolina

Cumulus is the licensee of the following stations listed in the Florence, South Carolina Arbitron metro: WYNN-FM, WYNN(AM), WBZF(FM), WHSC(AM), WWFN(FM), WCMG(FM), WFSF(FM), WMXT(FM), and WYMB(AM).³ Group ownership of these stations, with their complementary assets and formats, has enabled Cumulus to offer a variety of higher quality products at more efficient cost, to the benefit of both listeners and advertisers. As a result, it has provided a viable competitive alternative to the pre-existing group of stations owned by Root Communications Group LP,⁴ as well as an additional alternative for sum advertisers to the Florence Morning News, the Florence and Darlington County cable systems, television broadcast stations, and the other advertising media in the region.

► Advertising Rates:

Advertising rates overall do not appear to have increased significantly, and may actually have decreased slightly, since this market was consolidated. *See, e.g., Attachment A hereto* (weighted average of advertising prices per rating point for the Cumulus group of stations in Florence, from 1999 to 2001). Certainly, there is no indication that advertisers have been harmed by anticompetitive prices or other exercise of market power.

³ Cumulus also currently time brokers WHLZ (FM). WHLZ(FM) was sold by Cumulus to Apex Broadcasting on October 31, 2001, subject to an LMA by which Cumulus continues to time broker the station pending a proposed change in city of license by Apex. The LMA terminates on October 31, 2002 or, if later, the date the Commission's Order to move the station to Moncks Corner, SC becomes final. The Commission's Report and Order implementing that move was released February 1, 2002.

⁴ Root Communications Group LP ("Root") is the licensee of eight stations in the Florence, South Carolina market: WDAR(FM), WJMX-FM, WJMX(AM), WPFM(AM), WSQN(FM), WDSC(AM), WEGX(FM) and WGSS(FM).

► ***Greater Content Diversity:***

The NPRM acknowledges that group ownership of stations may well lead to greater diversity of content. *NPRM*, ¶37. Cumulus's experience in the Florence market supports this theory. Due to its ownership of a number of stations, Cumulus has an incentive to broadcast in a variety of formats in order to reach as many segments of the population as possible. In contrast, if it only operated one or two stations in the market, it would be forced to broadcast only in the formats with the broadcast reach. Another incentive to diversify formats is to prevent its own stations from competing against each other for the same listeners. As a result, the Cumulus stations in Florence broadcast the following formats: Rhythm and Blues Oldies, Gospel, Oldies, Contemporary Hit Radio, Classic Rock, Urban, and Country.⁵

► ***New Local Programming:***

Prior to consolidation, six of the stations in the cluster — WHSC, WBZF, WCMG, WMXT, WYMB and WWFN — were all programmed exclusively with non-local programming from a satellite feed. Further, none of the stations had used any sophisticated music testing, listener research or other market analysis techniques. The consolidation of the stations has enabled Cumulus to improve dramatically the quality of the stations' programming. As a result, stations that, in most cases, were poorly-run and under performing have been turned into modern, sophisticated operations able to compete more effectively with the Root group for listeners and advertisers. None of these improvements was likely to have been made absent the consolidation of the stations into a single local group.

⁵ According to the BIA data, the other group owner in Florence — Root Communications — also broadcasts in a wide variety of formats on its various stations, including Country, Gospel, Oldies, Contemporary Hit Radio, Soft Adult Contemporary, and News/Talk/Sports, many of which compete directly with Cumulus stations.

Today, all of the Cumulus stations in Florence have live/local programming, including local news updates. For example, WWFN, which was formerly all satellite feeds, now carries a community calendar and "Chamber of Commerce Chat." Cumulus believes that live programming is generally far more popular with listeners and advertisers than satellite-fed programming due to its local content, among other factors. Cumulus has also used sophisticated market research techniques to make its programming more responsive to the needs and tastes of listeners in the Florence market. For example, WYNN(AM) and WYNN-FM did not have music playlists before Cumulus acquired them, and programming was based primarily on the whims of the stations' disk jockeys. Cumulus has instituted new playlists for these stations based upon listener-driven market research performed by Stratford Research. Cumulus has made similar refinements and improvements to the formats of other stations.

► ***Improved Facilities:***

Prior to consolidation, several of the stations operated from sub-standard facilities. For example, WCMG's studio was located in a house trailer. As a result of group ownership, Cumulus consolidated the studios and other facilities of all the stations into a single building. The new studio facilities, together with the new equipment described below, have enhanced the reliability and quality of the stations' operations, both on the air and with respect to "back office" functions such as billing and traffic.

There are significant advantages and efficiencies to be realized from being able to manage all these stations under one roof. All the stations use the same production facility, and share one Production Manager and one network server to run their music playback system. Cumulus has replaced the existing automation systems of seven of the stations with new digital audio storage and management systems. The digital systems are computer-based and far more

reliable than the tape or CD systems, and are more advanced and sophisticated than the stations' former systems. Such systems also are more efficient than tape or CD systems because they contain hard drives that are capable of holding far more programming and other data. In addition, the digital system allows for more efficient integration of traffic and automation, as well as better production, and is helpful to advertisers in that it allows them to readily see available inventory on all stations and more easily purchase advertising spots. Further, an emergency generator has been installed at the studio location to keep all the stations operational in the case of an emergency or power failure. Before Cumulus's group ownership, many of the stations had also operated with outmoded billing and traffic systems. Cumulus purchased and installed new traffic and billing systems, and acquired new personal computers for many of the stations' personnel.

► **Personnel:**

The consolidation of the stations has resulted in savings due to the elimination of positions that are not necessary in the combined operations. For example, prior to Cumulus's involvement, there were six separate station groups with six separate general managers. Under Cumulus' stewardship, only one general manager is needed for all the stations. There have also been reductions in traffic director positions and in administrative and business office personnel. The stations currently have a total of 42 full-time employees. Cumulus estimates that if the stations were owned individually, they would need approximately 80 full-time employees.

At the same time, many of the stations had inadequate programming, sales and technical staffs prior to consolidation. Cumulus has added several new positions, including an Operations Manager, Production Manager, Broadcast Engineer, and Business Manager, as well as a Promotions Manager, who is the bridge between the stations and their involvement in the

surrounding communities. Cumulus has also been able to double the cluster's overall sales staff from six to 12 employees, plus three Sales Managers and a Sales Assistant.

In addition, Cumulus has instituted a training program for its employees in the Florence market, which it believes is more focused and effective than any training previously available to the stations' employees. For example, Cumulus devotes three hours per week to training its sales staff at the stations. Due to these weekly training sessions, the account executives are better trained to help advertisers reach their targeted demographics.

The greatly expanded sales staff enables Cumulus to become better informed about particular advertiser needs and respond to those needs, which in turn enables the Cumulus stations to compete better not only with the Root cluster but potentially other advertising media as well. It also allows Cumulus to provide additional, value-added services to advertisers. For example, by upgrading the stations' production facilities and adding a Production Manager, Cumulus is able to assist advertisers in creating more effective spots. Cumulus has also been able to design more targeted promotional campaigns and special events that can better achieve advertisers' marketing objectives.

► ***Enhanced Competition:***

The Cumulus stations actively and vigorously compete with Root Communications, the other major local group owner, for advertising dollars in the Florence market.⁶ Cumulus and Root frequently compete for the same advertising accounts, including High Point Furniture, Palmetto Nissan, and B&J Westernwear, which Root won, and Raceway

⁶ In addition to Root, Miller Communications, Inc. is also becoming a formidable player in the Florence market. WWKT-FM and WICI-FM now have a full sales staff selling in the Florence market.

Automotive and Auddie Brown Car Dealership, which Cumulus won. It was only through consolidation, and the resulting cost savings and product improvements described above (e.g., the addition of local programming), that Cumulus was able to take poorly operated and underperforming stations and turn them into viable competitors with the Root stations. Further, the costs of the market research and the build-out of the new studio space, for example, are justifiable only because they can be spread over a number of stations.

2. Rockford, Illinois

Cumulus is the licensee of the following stations in the Rockford, Illinois market: WROK(AM), WKMQ(FM), WXXQ(FM), and WZOK(FM). In contrast to Cumulus's experience in the Florence market – where it assembled a number of small separately-owned stations into a new cluster, the station group it acquired in the Rockford, Illinois market had already been consolidated prior to Cumulus's stewardship. Cumulus acquired all four stations from Connoisseur Communications of Rockford – WROK, WZOK, and WXXQ in October 2000, and WKMQ in April 2001. Accordingly, many of the efficiencies and benefits of consolidation had been realized prior to Cumulus's involvement. Nonetheless, Cumulus' experience in Rockford shows that such group ownership has resulted in significant benefits to listeners and advertisers, and has enabled Cumulus to compete effectively with the other major group owner in the market, RadioWorks, Inc.⁷

► Advertising Rates:

Due to the fact that Cumulus's involvement with the stations came after

⁷ RadioWorks, Inc. ("RadioWorks") is the licensee of the following stations in the Rockford market: WYHY(FM), WNTA(AM), WXRX(FM), and WGFB(FM).

consolidation, it does not have access to pre-consolidation pricing data. However, as indicated below, both Cumulus and RadioWorks engage in vigorous competition for advertising accounts in the market, with respect to price and other terms, to the benefit of advertisers. Cumulus believes that advertising rates in the market are not significantly higher – and in some cases may be lower – compared with before consolidation.

► ***Greater Content Diversity:***

Similar to its experience in Florence, Cumulus's experience in Rockford supports the theory that group ownership of stations leads to greater diversity of content. *See NPRM*, ¶37. In order to reach a wide variety of listeners and compete effectively with the RadioWorks cluster, the Cumulus stations in Rockford broadcast in the following formats: Oldies, Top40/Contemporary Hits Radio, Country, and News/Talk.⁸

► ***Expanded Local Programming:***

Cumulus has improved the quality of the radio product by adding morning newscasts on all the FM stations, which air every 30 minutes between the hours of 5:00 AM and 9:00 AM. These newscasts are produced locally and run two to three minutes in length. Cumulus has also initiated perceptual studies and music tests on an annual basis in order to be more responsive to the preferences of the listening public. Further, it has added Spring/Fall book promotional contests that reward listeners with a "Major Market" contest offering grand prizes customized for the listeners of a particular format. For example, the "Country Cash World Tour" contest gave Country-format listeners an opportunity to win a contest that included a trip to Nashville to sit in on a recording session with a well-known Country music artist. This year they

⁸ According to BIA data, the RadioWorks stations in the Rockford market broadcast in the following formats: Classic Hits, Adult Contemporary, Classic Rock, and News/Talk/Oldies.

will hold listener appreciation "Birthday Parties" featuring format-specific bands for each of the FM stations.

► ***Benefits to Advertisers:***

Cumulus offers Spring/Fall book promotions that advertisers may sponsor, which are targeted to fit specific lifestyles of the format. For example, last Spring the Oldies station offered a grand prize of a trip for four to London to see the Abbey Road studios. They also package the four stations to offer the advertiser greater reach and frequency than what may have been previously available separately. In addition, Cumulus has introduced a three-level sales training program with a nationally-recognized radio sales trainer, in which all Rockford salespeople are participating.

► ***Enhanced Competition:***

There is active and vigorous competition between Cumulus and RadioWorks both for listeners and advertisers. Both groups aggressively market their stations to the public every day, and both have used a combination of TV commercials, direct mail, billboards and newspaper advertisements to promote listenership. There is also stiff competition for advertising revenue. The groups call on many of the same local businesses and are always challenged by customers to look for ways to create "added value" for them in order to obtain a bigger share of the customer's advertising buy. It is not uncommon for significant advertising accounts to switch hands as a result of this aggressive competition.⁹

⁹ For example, Cumulus lost the Verizon Wireless account to RadioWorks in October 2001 as a result of RadioWorks' lowering its advertising rates. Cumulus was able to win this account back in March 2002. Cumulus also lost the U.S. Cellular account to RadioWorks in January 2002. Cumulus had the 2001 annual contract for Menard's, but lost the 2002 annual contract to RadioWorks due to RadioWorks' dropping its prices. Cumulus lost the 2001 annual business for National City Bank to RadioWorks because of its aggressive pricing, but was able to win that business back in 2002.

III. DISCUSSION OF IDENTIFIED POLICY OPTIONS

A. Reliance on Current Numerical Limits

Experience under the 1996 Act shows that the current numerical limits have worked well in practice, are understood and relied on by licensees, and effectively address the Commission's competition and diversity goals in a manner consistent with congressional intent. *See discussion in Part II, supra.* Accordingly, even assuming *arguendo* that the Commission has authority under the statutory framework to consider other public-interest factors, Cumulus believes that the Commission should rely exclusively on the current numerical limits in implementing its policies on local radio ownership.

Cumulus also believes that the Commission should *not* change the definition of radio "markets" that has been consistently used to apply the local radio ownership rule (other than, at most, any minor adjustments in methodology determined to be necessary to address the so-called "counting consistency" issue). The current market-definition and station-counting methodology is familiar to applicants and their engineering consultants, and none of the suggested alternatives have been shown to produce better results. *See generally Comments of Cumulus Media Inc., Definition of Radio Markets*, MM Docket No. 00-244 (Feb. 26, 2001). Among literally thousands of assignments and transfer of control applications that have been filed under the 1996 Act, there have been very few problems in applying the existing methodology.¹⁰

¹⁰ With respect to the treatment of local marketing agreements ("LMAs") and time brokerage agreements ("TBAs"), Cumulus supports the Commission's proposal to take the competitive impact of LMAs and TBAs into account in the context of a bright-line rule approach by continuing its policy of attributing brokered stations to their brokers. *See NPRM*, ¶80.

B. Reliance on Modified “Bright-Line” Rule

Another possibility posed in the NPRM is “modifying the local radio ownership rule to revise the numerical limits or adopt a new framework entirely.” NPRM, ¶63. However, none of the changes suggested in the NPRM can be rationally supported in a manner consistent with the intent of Congress.

1. Revised numerical limits

Tightening the current numerical limits imposed by Section 202(b) would be contrary to the statute and could not be rationally justified in any event. The language Congress employed in Section 202(b)(1) – that the Commission “shall revise” its local radio ownership regulations “to provide” that specific numbers of radio stations could be owned in various tiers of markets – is clearly mandatory, not merely hortatory. Moreover, in Section 202(h), Congress provided only that the Commission shall review its ownership rules biennially as part of its regulatory reform review under Section 11 of the Communications Act of 1934 to “determine whether any of such rules are necessary in the public interest as the result of competition.” 1996 Act, §202(h). The Commission is then directed to “repeal or modify any regulations it determines to be no longer in the public interest.” *Id.*

While Section 202(h) thus imposes upon the Commission a duty to examine critically any existing rules to determine whether they should be retained, *see Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002), it is not reasonable to construe this provision as authorizing the Commission to impose additional or greater ownership restrictions than Congress dictated in Section 202(b). Such a construction would be wholly at odds with the deregulatory thrust of regulatory reform review under the 1996 Act, which is designed to

determine whether a particular regulation is “no longer necessary” in the public interest as a result of competitive developments. 47 U.S.C. §161(a)(2).

2. Market-share limits

The Commission similarly lacks the authority to engraft new revenue-share or audience-share restrictions onto the clear numerical station limits contained in Section 202(b) and the current local radio ownership rule. Nowhere in Section 202(b) did Congress authorize the Commission to measure or take into account the resulting audience or radio advertising revenue shares accounted for by the acquiring party — as opposed to the number or percentage of stations — much less grant the Commission any discretion to balance consideration of those factors against the numerical station limits delineated in the statute. Where Congress has told the Commission to count the number of stations (and, in one specific category, also to count the percentage of stations), rather than to count revenue or audience shares, it would be patently unreasonable to infer that Congress intended to have the Commission impose lower numerical station limits based upon revenue or audience share levels. The whole structure of Section 202(b) compels the opposite construction.

In any event, the Commission has no valid basis to conclude that a “50/70 screen” or other revenue-share (or audience-share) test is necessary to safeguard its public-interest goals regarding competition or diversity, and it has no tangible evidence that revenue or audience shares of a given level produce adverse effects in any relevant market. It is well recognized by the federal antitrust agencies that market shares alone are not an accurate or complete indicator of actual effects on competition. *See DOJ-FTC Horizontal Merger Guidelines* (Rev. 1997). Moreover, both the Commission and the Department of Justice (“DOJ”) have recognized that “mechanical application of the [HHI] standards may provide misleading answers to competitive

issues in the context of local radio mergers *Great Empire Broadcasting, Inc.*, 14 FCC Rcd. 11145, 11150 (1999).

Moreover, the NPRM incorrectly assumes that increased consolidation results in higher advertising rates. Indeed, as illustrated in the attached Glassman-Oliver study (submitted in response to paragraph 48 of the NPRM), there is strong evidence that the opposite may be true. The Glassman-Oliver study uses a measure of radio station revenue per rating point calculated from BIA revenue reports and Arbitron ratings. The study finds that high levels of market concentration among local radio stations generally results in *lower* – not higher – prices for advertisers, most likely due to the substantial efficiencies derived from local multi-station ownership. *See Attachment B hereto; see also NPRM*, ¶48 (“Studies showing that radio station combinations have lower advertising rates or greater programming benefits than separately owned stations would be particularly useful.”)

3. Treatment of smaller radio markets

Finally, to the extent that the Commission proposes to consider revenue-share or audience-share limits that “attempt to ensure the presence of least three competitive firms” (NPRM, ¶64), the Commission needs to take into account the particular circumstances and marketplace realities of smaller radio markets. Experience has shown that many smaller markets generate insufficient radio advertising revenues to support more than two viable ownership groups able to provide quality, cost-effective products to listeners and advertisers.¹¹ Indeed, as

¹¹ Notwithstanding the concerns expressed in the Commission’s recent *Hearing Designation Order* in the Air Virginia/Clear Channel matter, MM Docket No. 02-38 (released March 19, 2002), such effective “duopolies” in most smaller markets do not create potential adverse competitive effects in the form of coordinated behavior. *See discussion at pp. 25-26 infra.*

illustrated above in the Florence and Rockford markets, and as the NPRM itself suggests (at ¶71), there clearly are situations in which greater levels of consolidation in smaller geographic markets can result in extraordinary efficiencies and other pro-competitive benefits to consumers (*e.g.*, through more diverse and higher quality programming for listeners, co-location of facilities and improved product offerings for advertisers).

To achieve competitive viability in the marketplace, stations in smaller and mid-sized markets such as Florence and Rockford must have several essential components. They must have adequate station management, programming, engineering and sales support; they must devote the resources necessary to produce high quality, locally-originated programming; and they must employ the research, marketing, and management techniques needed to respond to listener and advertiser desires. If a station is not well equipped and managed, it is not likely to generate sufficient revenues to cover the necessary costs of investment in these essential elements — with the result that the needed investments are not made, the quality of programming and service to the community deteriorates, and the station loses advertiser support and viability in the market.

Consolidating smaller market stations under common ownership — and, in many cases, through co-location of some of their facilities — achieves significant cost savings, which in substantial part makes possible the necessary investments to restore the stations to a position of competitive viability. The cost savings and additional investments enable the common owner to achieve significant product improvements that attract more listeners and make the stations more attractive to advertisers. Under common ownership, the stations as a whole can spread out and broaden their overall appeal through an array of more numerous, more focused radio “products” that are more responsive to the interests of both listeners and advertisers. As a result,

radio can be revitalized in many smaller markets and be made more, not less, competitive in a way that truly benefits consumers. However, in such small markets (*e.g.*, markets with \$10-15 million in revenues), there simply is not enough revenue to permit three viable radio group owners to achieve such economies.

Accordingly, even assuming *arguendo* that the Commission were to adopt a revenue-share rule or policy – or were to continue with its current case-by-case analysis of market concentration – the revenue-share levels would need to be set higher in such smaller markets to recognize these marketplace realities and the resulting practical infeasibility of ensuring the presence of at least three viable, competitive firms in the market.

4. Treatment of existing station combinations

Cumulus and other firms responded to the Congressional plan set forth in Section 202(b)(1) of the 1996 Act by investing many millions of dollars in the acquisition and development of radio stations previously held by struggling independent operators. These ownership arrangements were granted in accordance with applicable rules and policies, and were determined to be in the public interest. As a result, the 1996 Act has had exactly the positive impact intended by Congress, particularly in the mid-size and smaller markets where the economic problems of radio typically were more severe. The Commission should not attempt to promulgate any retroactive rules that would disturb these ownership combinations.

In avoiding unfair retroactivity, Cumulus believes the Commission must be mindful of what Justice Scalia has termed “secondary retroactivity” – *i.e.*, a rule with “exclusively future effect” that “*affect[s]* past transactions,” *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 219 (1988) (Scalia, J., concurring) (emphasis in original) – as well as what Commissioner Ness has referred to as the “law of unintended consequences.” *Definition of Radio Markets*, MM Docket No. 00-244, 15 FCC Rcd 25077, 25096 (2000) (Separate Statement

of Commissioner Ness). As Justice Scalia has explained, “a rule that has unreasonable secondary retroactivity – for example, altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule – may for that reason be ‘arbitrary’ or ‘capricious,’ see 5 U.S.C. §706, and thus invalid.” *Bowen v. Georgetown University Hosp.*, 488 U.S. at 220. This concern is heightened when a new regulation “replace[s] a prior agency interpretation.” *Smiley v. Citibank, S.A.*, 517 U.S. 741, 745 n. 3 (1996). To avoid this defect, any rule changes that the Commission decides to adopt in this area “must be applied prospectively and fairly, with cognizance of the reasonable market expectations of the parties who hold combinations lawfully assembled under [the Commission’s] existing rules.” (*Definition of Radio Markets*, Separate Statement of Commissioner Ness, 15 FCC Rcd at 25096).

C. Case-By-Case Competition Analysis

The proposed case-by-case competition analysis – whether alone or in conjunction with a “screen” or other set of presumptions (NPRM, ¶66) – is unwarranted and inappropriate, for at least the following reasons:

1. Case-by-case review is inconsistent with the intent of Section 202(b).

The legislative history of Section 202(b) confirms Congress’s intent that the Commission implement the statute’s specified numerical station limits, rather than engage in a case-by-case evaluation of market concentration based upon extra-statutory considerations. The most compelling evidence of that intent can be found in the prior versions of Section 202(b) that Congress specifically rejected. A provision that would have eliminated all local numerical radio station ownership limits — and that would have expressly authorized the Commission to refuse its consent to a transfer of a radio license if such transfer would result in an “undue concentration of control” or would “harm competition” — was included in the Senate bill, but the Conference

Committee deleted that provision from the final version of the Act.¹² See 142 Cong. Rec. H1121 (1996), reprinted in 1996 U.S.C.C.A.N 10, 174. The fact that Congress considered, but refused to enact, a provision permitting a case-by-case approach confirms that no such approach was envisioned for the Commission's implementation of § 202(b).

2. There is no demonstrated necessity for case-by-case competitive review.

As noted above, there is no tangible evidence that radio station consolidation under the 1996 Act has created undue "market power" that can harm competition, or has had any other demonstrable adverse competitive effects, in any relevant market. Thus, the Commission has no valid reason to think that the extensive, case-by-case review of radio license assignment and transfer of control applications envisioned in the NPRM is necessary to safeguard competition. To adopt such an approach on this record would stand §202(h) on its head. *See Fox Television Stations, Inc. v. FCC, supra.*

3. Case-by-case review needlessly burdens the Commission with a host of fact-intensive and complex economic analyses and determinations that are beyond the scope of the Commission's regulatory mission in broadcasting.

The proper course for the Commission is to leave review of the competitive impact of radio multiple ownership with the expert agencies charged with enforcing the antitrust laws. The Commission itself has "expressly recognized the primary role played by other governmental entities that are responsible for, and have the expertise to consider, alleged

¹² Specifically, Section 207(b)(2) of the Senate bill would have provided, in relevant part: "The Commission shall modify its rules set forth in 47 CFR 73.3555 by eliminating any provision limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity either nationally or in a particular market. The Commission may refuse to approve the transfer or issuance of an AM or FM broadcast license to a particular entity if it finds that the entity would thereby obtain an undue concentration of control or would thereby harm competition."

anticompetitive conduct,” and has “consistently declined to be the initial investigator of claimed anticompetitive practices regarding broadcast applicants and licensees.” *Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6680 ¶ 35, n. 34 (1992). *See also Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1202 (1986).

The wisdom of this approach here is aptly illustrated by the NPRM itself, which in suggesting a framework for possible case-by-case competitive analysis, poses dozens of factually complicated economic and empirical questions that would need to be resolved in virtually every license assignment and transfer of control application that trips some arbitrarily-set “screen”. Indeed, the Commission is presently engaged in just such a burdensome – and unnecessary – exercise in connection with various cases being considered under the “interim policy” outlined in the NPRM.

4. Case-by-case review unreasonably duplicates the functions of the antitrust enforcement agencies.

Finally, such an attempt by the Commission to replicate the analysis performed by the expert antitrust agencies imposes an additional, duplicative, and unnecessary layer of regulation that unnecessarily duplicates the functions of the antitrust enforcement agencies . Moreover, the NPRM’s apparent assumption that transactions below the \$50 million Hart-Scott-Rodino (“HSR”) threshold would not be reviewed by the DOJ (NPRM, ¶67) is erroneous. The reportability of a transaction under the HSR Act does not determine whether proposed transactions are investigated or reviewed by the DOJ. For example, numerous radio station acquisitions by Cumulus that have not required HSR filings have been actively investigated and reviewed by the DOJ.

5. The framework for case-by-case competitive analysis suggested in the NPRM reflects improper assumptions concerning key competitive factors.

The NPRM's analytical framework for conducting the proposed case-by-case competitive review is also flawed, in at least several respects.

First, as previously stated in other proceedings,¹³ Cumulus believes that the Commission lacks an adequate evidentiary basis to conclude that radio advertising alone qualifies as a relevant "product market" under applicable judicial and agency precedent, including the DOJ-FTC *Horizontal Merger Guidelines*' analysis. Available data suggests that radio station broadcast advertising often faces substantial competition from other advertising outlets, including broadcast television, cable, newspaper, outdoor advertising, telephone directories, and other print media. If such a broader advertising product market were properly considered, most if not all proposed radio station assignments or transfers would create no potential for any significant anticompetitive effects.

Second, the proposal to use the Arbitron "metro" methodology to determine the relevant "geographic market" for purposes of competitive analysis (NPRM, ¶44) is highly questionable, particularly in many smaller markets. As the Commission recognized in its 1992 decision, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making, Revision of Radio Rules and Policies*, MM Docket No. 91-140, 7 FCC Rcd 6387, 6394-95 (1992), Arbitron markets change regularly, the number of rated stations continually fluctuates,

¹³ See, e.g., *Letter from Bruce D. Ryan, counsel for Cumulus, to Peter H. Doyle, Esq., Chief, Audio Services Division*, dated December 5, 2001, File Nos. BAL/BALH-19980922EA-ED, EK; BAL/BALH-19981028EC-ED, at pp. 8-9.

and the “home market” designation and audience ratings of stations can change depending upon a number of factors, some of which are within the control of the individual licensee. Moreover, in many smaller and mid-sized markets, the Arbitron-defined Metro does not necessarily include all stations that may be geographically located so as to provide service to the same listeners or to sell advertising to the same advertisers.

Third, no rational competitive analysis can properly determine market shares based on a methodology such as the BIA database (NPRM, ¶45), which arbitrarily assigns all station revenues to the designated “home” Arbitron metro for each listed station – regardless of where those revenues may be geographically derived from. Such a method also irrationally ignores all radio station advertising sales derived by other, non-“home-market” radio stations within the same Arbitron metro.¹⁴

Finally, the NPRM appears to reflect a misperception that higher levels of concentration in a local radio market can create a potential lessening of competition due to “coordinated effects.” NPRM ¶45; *see also id.* ¶69. However, as Cumulus has demonstrated in other filings,¹⁵ coordinated behavior among competing radio operators in a local market is extremely unlikely because the normal characteristics of radio advertising sales do not facilitate coordination. Radio advertising products are heterogeneous, and prices are typically negotiated on a deal-by-deal basis depending on various factors and are not reported in any way that

¹⁴ For these reasons, BIA itself has recognized in the context of several assignment or transfer of control applications that its standard revenue estimates often overstate or understate the true revenue shares of stations competing for the same advertising dollars.

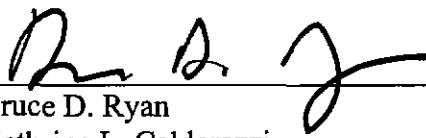
¹⁵ *See, e.g., Letter from Bruce D. Ryan, counsel for Cumulus, to Peter H. Doyle, Esq., Chief, Audio Services Division, December 5, 2001, supra* note 13, at 19-20 & Attachment B (Affidavit of Dr. Stephen Stockum).

competitors can observe. Thus, successful coordination is virtually impossible within the meaning of the *Horizontal Merger Guidelines*.¹⁶

Respectfully submitted,

CUMULUS MEDIA INC.

By:



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March 27, 2002

¹⁶ See *id.* The radio industry is thus sharply distinguishable from other industries where policing and monitoring of collusive agreements may be far less difficult. For example, in the *FTC v. Heinz* case cited in the Commission's recent *HDO in Air Virginia, Inc.*, FCC 02-53, at 10, the court specifically noted (*inter alia*) that the record reflected that supermarket prices for baby food were readily available from industry-wide scanner data within weeks. See *FTC v. H.J. Heinz Co.*, 246 F. 3d, 708, 721 (D.C. Cir. 2001).

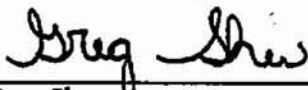
DECLARATION OF MARSHALL LUCIUS

1. My name is Marshall Lucius. I am the Business Manager for the radio broadcast operations of Cumulus Licensing Corp. in Florence, South Carolina.
2. I have read the foregoing comments of Cumulus Licensing Corp. in MM Docket Nos. 01-317 and 00-244. The statements of fact contained therein concerning the Florence, South Carolina market are true and correct to the best of my personal knowledge, information and belief.
3. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27 day of March, 2002.


Marshall Lucius

DECLARATION OF GREG SHER

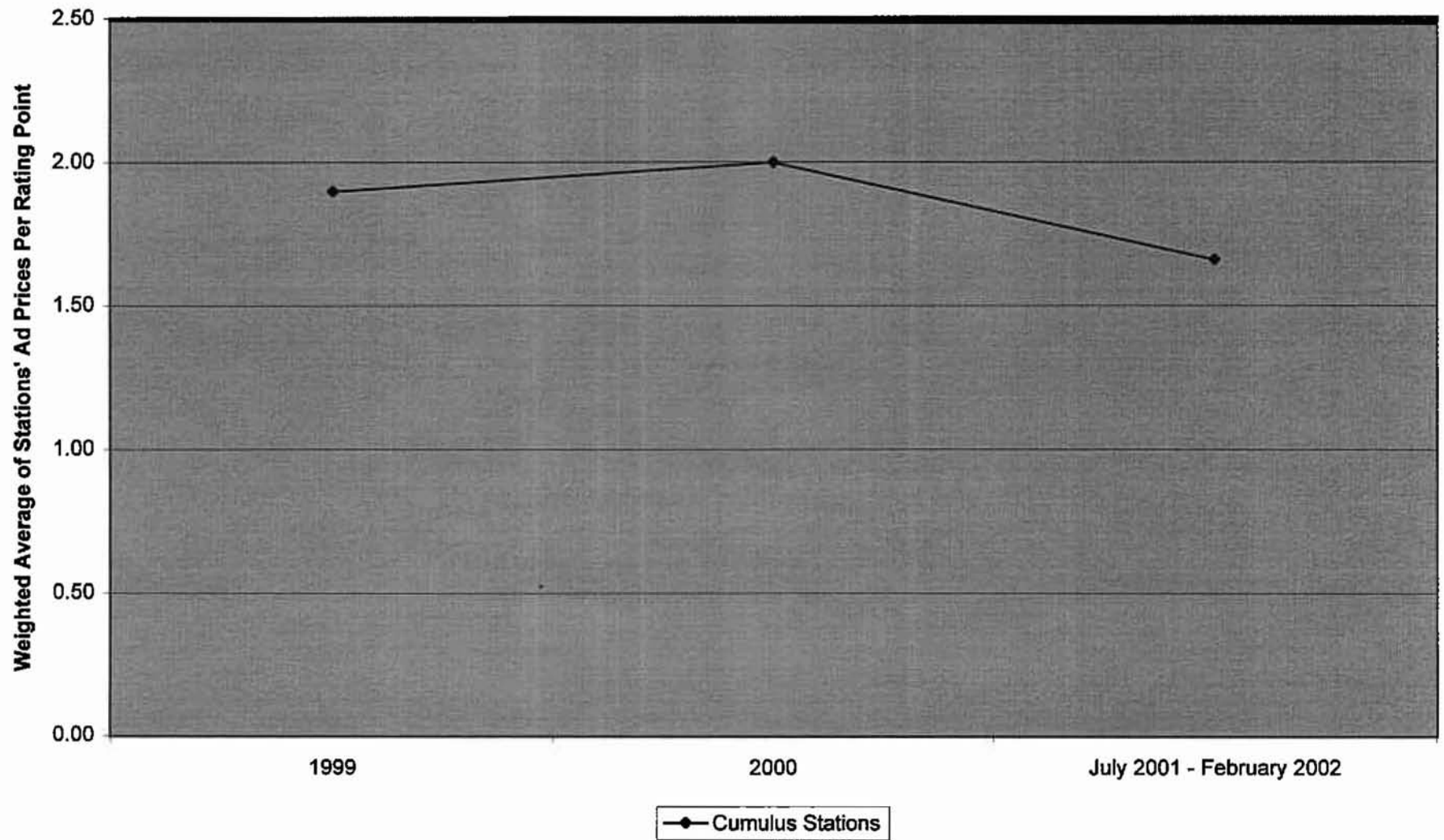
1. My name is Greg Sher. I am the Market Manager for the radio broadcast operations of Cumulus Licensing Corp. in Rockford, Illinois.
2. I have read the foregoing comments of Cumulus Licensing Corp. in MM Docket Nos. 01-317 and 00-244. The statements of fact contained therein concerning the Rockford, Illinois market are true and correct to the best of my personal knowledge, information and belief.
3. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 26 day of March, 2002.



Greg Sher

ATTACHMENT A

Weighted Average of Ad Prices Per Rating Point
for 7 Cumulus Stations in Florence, SC*



*See attached explanatory note for descriptions of methodology and list of Cumulus stations.

Explanatory Note:

The weighted average graph uses Cumulus's internal average price data (based on total advertising revenues and spot counts) and Arbitron ratings for the following Cumulus owned or operated stations in the Florence, South Carolina market: WFSF-FM, WWFN-FM, WYNN-AM, WYNN-FM, WMXT-FM, WHLZ-FM, and WCMG-FM. Cumulus stations WBZF-FM, WYMB-AM, and WHSC-AM are not included in this graph due to the fact that they are simulcast with WYNN-AM, WHLZ-FM, and WWFN-FM, respectively. Accordingly, these stations have little or no separate revenue. To create the graph, the annual average price was divided by the average of that year's Spring Arbitron rating, and the previous year's Fall Arbitron rating. These two Arbitron books contain the most recent ratings data available to advertisers during the calendar year, and therefore are the relevant Arbitron books for advertisers' consideration of cost per point. To obtain a properly weighted average, each advertising price per rating point is multiplied by the station's share of revenue.

ATTACHMENT B

The Pricing of Radio Advertising: Does Market Concentration Matter?

Stephen Stockum¹

I. Introduction

A dramatic consolidation in the radio industry has resulted from the Telecommunications Reform Act of 1996, with over 8,000 station ownership changes since passage of the Act.² The rapid rate at which this industry moved from being highly fractured to being relatively highly concentrated likely is unprecedented. The Department of Justice's Antitrust Division ("DOJ") has acted to restructure a number of these deals, preventing radio station owners from accumulating what DOJ has viewed as excessive market share in what they consider to be "local radio advertising markets." While DOJ has looked at market characteristics in addition to market concentration, they have often acted to prevent mergers from creating firms with local radio advertising revenue shares of over 40 percent.³ In addition, the Federal Communications Commission ("FCC") has expanded its reviews of radio license transfers to incorporate antitrust analysis as a part of its public interest standard.⁴ In August 1998 the FCC began "flagging" proposed transactions in which one owner has over 50% of local radio advertising revenues or in

¹ Senior Vice President, Glassman-Oliver Economic Consultants, Inc., Washington, D.C. The author thanks Brian Murphy and David Mandell for valuable research assistance.

² BIA Financial Network Inc., "State of the Radio Industry: Ownership and Consolidation 2001."

³ See, e.g., DOJ Competitive Impact Statement in *U.S. v. CBS Corp.* (98CV00819) March 31, 1998. ("This relief will reduce the market share in advertising revenues CBS would have achieved through the proposed transaction from 59 percent to 39 percent in the Boston market, 49 percent to 39 percent in the St. Louis market, and from 46 percent to about 40 percent in the Baltimore radio market."). See also DOJ Press releases, March 5, 1999, Triathlon, Wichita; July 14, 2000, Entercom, Kansas City; July 18, 2000, Citadel, Saginaw, Mich; Sept. 1, 1999, Marathon Media, Billings, MT.

⁴ See, e.g., Remarks before the National Association of Broadcasters Radio Convention by FCC Chairman William Kennard, October 16, 1998.

which two owners have over 70% of advertising revenues.⁵ In one large radio merger, the FCC required divestiture of 122 stations in 37 areas to resolve its concerns about competition as well as local radio ownership and radio-television cross ownership concerns.⁶

The results of the consolidation and federal interventions have been controversial. While advertisers frequently do not object to radio mergers, competing radio stations frequently do complain. But competitor complaints generally suggest that mergers are procompetitive, because efficiencies will enable merged firms to lower prices and force competitors to lower prices, while an anticompetitive merger would allow competitors to raise prices. Owners of radio stations have complained that federal intervention is excessive, in part because they contend that consolidation has often resulted in procompetitive efficiencies, and that competition for advertising dollars from other media prevents radio station owners from exercising market power. No cases have been litigated, and therefore there has been no court clarification of the appropriate standard for antitrust review. In general, radio station owners have capitulated to DOJ and FCC demands for divestitures that allow them to acquire the vast majority of the stations from target companies, rather than subject themselves to uncertain and potentially lengthy and costly litigation.

⁵ FCC 47 CFR Part 73, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets.

⁶ FCC Press Release, August 15, 2000, AMFM/Clear Channel.

The issue of the appropriate role for antitrust in the radio industry can be analyzed empirically. In this paper I estimate the relationship between radio advertising prices and measures of market concentration. I find that high levels of market concentration among local radio stations do not result in higher prices. Indeed, I find that consolidation beyond the levels at which the DOJ and FCC have often blocked radio mergers actually results in *lower* prices for advertisers, most likely because of substantial efficiencies from local multi-station ownership.

II. Description of Empirical Methodology, Data, and Regression Variables

I employ a version of the traditional economic “structure-performance” model⁷ to test the effect of several variables on radio advertising pricing. This model tests the impact of market “structure,” (i.e., market concentration) on competitive “performance,” (i.e., pricing). I utilize a standard ordinary-least-squares regression model on both 1998 and 2001 cross-sectional data on over 3000 radio stations.

The performance variable (the “dependent” variable) is a proxy for the price paid for radio advertising. I use a measure of radio station revenue per rating point calculated from BIA revenue reports and Arbitron ratings. The price of radio ads is negotiated individually between radio station owners and advertisers and is not publicly available. The proxy is closely related to what is known in the radio industry as “cost-per-point,”

⁷ The seminal study in this area is Bain, J., “Relation of Profit Rate to Industry Concentration, American Manufacturing, 1936-1940,” *Quarterly Journal of Economics* (1951).

i.e., the cost of a radio ad per Arbitron share point. From advertisers' perspective, this is the relevant measure of price.⁸

The model controls for other factors that affect pricing, and therefore isolates the independent effect of market concentration on pricing. Because I am using cross-section data, a rating point translates into a different number of listeners in each market depending on population. I include a population variable to account for this difference. Each station's signal power also is used. For low-power stations, this variable will account for their not reaching the entire market's population. For high-power stations, this variable will account for reaching into populations (e.g., rural areas) not included within rated markets. I also include a variable for the per capita income of each market, in order to capture the effect of a market's spending power on the value of advertising.

I use a number of market structure variables in the regression specification to test the degree to which each explains variations in the pricing variable. All measures of market concentration are expressed in terms of local radio advertising revenue.

I include a variable for the share of the leading station owner in the market. The rationale for this variable is DOJ's hypothesized economic basis of anticompetitive conduct in local radio markets. Characteristics of competition for advertising dollars

⁸ Because the numerator of the dependant variable is revenue, not price, this proxy implicitly assumes that there is no cross-sectional variation in total annual advertising spots. This assumption imparts no bias to the results.

imply that coordinated interaction⁹ (tacit collusion) is an extremely unlikely means of supracompetitive pricing in this industry. Rather, any anticompetitive effects are more likely to occur through unilateral anticompetitive conduct¹⁰ by an owner of a group of highly-rated stations in a market. Such an exercise of market power (in theory) raises a pricing umbrella under which other radio stations also may be able to raise their prices. Thus this theory suggests that the share of the largest owner of stations in a local market may be an important determinant of pricing for all radio stations. It is the variable most focused on by the federal agencies in their investigations of radio deals, consistent with their emphasis on "unilateral effects" in their radio merger Complaints.¹¹ I tested various functional forms of this variable based on a concern that the relationship between leading firm share and price might not be constant.

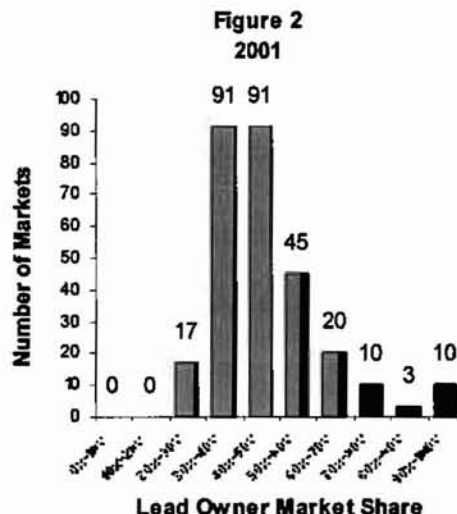
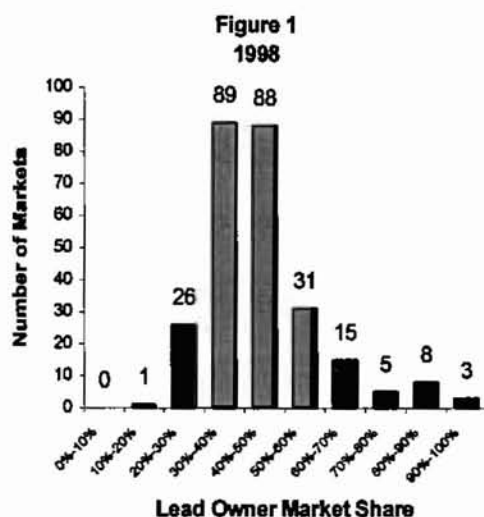
I also explicitly tested the potential effect on pricing of the FCC's thresholds of 50% for the leading firm and 70% for the combined share of a local market's top two firms. If these variables are not positive and are significant, this analysis would suggest that the FCC's "flagging" policy is not well-founded.

Figures 1 and 2 show the distribution of leading firm shares in the 1998 and 2001 data sets, respectively. The presence of relatively few markets with leading shares over 50% is due in large part to federal enforcement policy, though consolidation between 1998 and 2001 did increase this number.

⁹ See Department of Justice and Federal Trade Commission HORIZONTAL MERGER GUIDELINES, 1992, Section 2.2.

¹⁰ *Id.*, at Section 2.1.

¹¹ See, e.g., DOJ Competitive Impact Statement in *US v. Jacor Communications*, August 5, 1996, at II.C.



A dummy variable also was included for AM/FM, to determine whether a station's ad rates would differ based only on its status as an AM or FM radio station. In addition, a variable was included for the market concentration within each station's format, to test whether dominance of a format adds pricing power.

III. Results

Table 1 shows the regression results for 1998 and 2001. For the reported regressions, firms with one percent market share or less were dropped from the specification. Firms with such a small share exhibited erratic pricing performance, as some of them had very high pricing due to a strong market position in a very small niche (e.g., Vietnamese language stations), while others priced very low to attract advertisers to their poorly-performing stations. But while the regression fit was stronger for this specification, none of the primary variables were affected by omitting these observations.

Any market power effects from a firm's share should be expected to derive from the firm's total share in a local market rather than from individual station shares. Individual station shares should be expected to have a positive coefficient, because the broader reach of larger stations provides more value to advertisers per listener reached than smaller stations. If an advertiser wants to reach a certain number of listeners, it could place a single ad on a station with a high share, or place multiple ads on a station (or stations) with low shares. In choosing the latter option, many listeners will hear the ad twice, i.e., be "duplicated." Advertisers value "nonduplicated listeners" more than duplicated listeners, thus larger stations can charge more per listener than smaller stations.¹² It also should be noted that only about 5 percent of stations in our sample have market shares that exceed 20 percent. It is highly unlikely that the estimated positive relationship between price and station share would reflect market power with shares in such a low range.

¹² It is well known that television ads on the Super Bowl are significantly more expensive, on a per-viewer basis, than other television ads. This is explained by the fact that the game's ratings are so high that it is an excellent vehicle for advertisers to reach a very large number of nonduplicated viewers.

Table 1
Regression Results

1998 Data			2001 Data		
F-Statistic	1759		F-Statistic	1650	
R-Squared	0.80		R-Squared	0.78	
Observations	3412		Observations	3695	
Parameter Estimate	T-Stat	Variables	Parameter Estimate	T-Stat	
-8.756	-13.75	Intercept	-12.200	-19.38	
-0.005	-2.93	Largest Owner Share	-0.011	-5.65	
-0.083	-3.16	Format HHI	-0.026	-0.93	
0.881	85.64	Population	0.881	75.88	
0.940	14.29	Metro Area Income	1.267	18.97	
0.073	11.11	Signal Power	0.080	11.33	
-0.165	-6.65	AM Dummy	-0.148	-5.43	

As noted above, owner share should reflect any unilateral market power held by an owner of a group of stations. The fact that this variable is not positive rebuts the market power hypothesis. The fact that this variable is negative and significant appears likely to reflect efficiencies from local multi-station ownership, such as improved programming and market research, enhanced billing and traffic systems, centralized databases, expansion of sales staffs, employee training, and enhanced services to advertisers.

The share of the leading station owner in the market has a negative and significant effect on advertising rates for both 1998 and 2001. This finding indicates that as the leading firm in a market grows, it actually has a price-reducing effect on other stations in

the market. My interpretation of this result is that as the leading firm achieves efficiencies, it lowers its profit-maximizing price to take business away from competitors, forcing smaller firms to lower prices (and perhaps also pressuring these smaller firms to increase their own efficiency). In markets exhibiting these characteristics, overzealous antitrust policy is not socially productive, and it is not benign. Rather, it causes economic losses not just to radio station owners, but also to advertisers who will not benefit from the lower prices that would result from greater consolidation. Interestingly, the coefficient on this variable increased between 1998 and 2001, both in terms of its coefficient and its t-statistic. This suggests that firms improved their ability to generate efficiencies from larger scale over this timeframe.

Format HHI, a measure of market concentration within the radio station's format, is negative and significant in 1998 but negative and insignificant in 2001. This result refutes the hypothesis that dominating a format conveys market power.

The market's population (population) and its per-capita income (income) were two of the most highly significant variables in determining radio station advertising rates. Not surprisingly, larger and higher-income areas are more valuable for advertisers and thus command higher prices. The station's power also is positive and significant in both data sets. Obviously, the greater the geographic reach of a station's signal and the more clearly a station can be received, the higher is the value to advertisers and thus higher prices can be charged.

I also performed a separate regression to evaluate the effect on advertising rates of proposed transactions that would currently be "flagged" by the FCC. I tested both the 50% and 70% FCC flagging thresholds. I found that the combined shares of the two leading firms had no significant effect on pricing. The share of the leading firm did have a significant effect on pricing, but that effect was *negative*. Indeed, the price-reducing effect of greater market concentration actually *increases* beyond the 50% market share threshold. This indicates that the very cases the FCC chooses to set aside for further review have markets with lower advertising rates than those thousands of applications that the FCC has summarily granted.

The test of the FCC's 50% threshold finds that the adjusted mean advertising price (i.e., the mean after adjustments for the control variables) is *lower* when the leading firm has a share over 50%. Similarly, the test of the FCC's 70% threshold finds that the adjusted mean advertising price is *lower* when the combined share of the two leading firms is over 70%. Thus, not only does the FCC's "flagging" standard fail to identify the threat of market power, it perversely targets markets where additional market concentration would reduce prices and benefit advertisers.

IV. Conclusion

These results raise serious doubts about the economic basis for the government's challenges of radio station mergers. The higher is the leading owner's share of local radio advertising dollars, the lower are advertising rates in that area. This strong result suggests that pricing is driven by factors other than radio market concentration, most

likely competition from other advertising media, competition from smaller fringe radio stations, and efficiencies from consolidation. This result holds for both 1998 and 2001 data; indeed, the result is stronger in 2001 after greater consolidation occurred.

Moreover, our results indicate that FCC market share thresholds are not reflective of radio station owners' ability to exercise market power.